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**PACIFIC X TELESIS**  
Group-Washington

August 30, 1994

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AUG 30 1994

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: *GEN. Docket No. 90-314, Amendment of the Commission's Rules to Establish New Personal Communications Services*

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its "*Opposition and Comments*" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

*Alan F. Ciamporcero*

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

AUG 3 0 1994

In the Matter of )  
 )  
Amendment of the Commission's ) GEN Docket No. 90-314  
Rules to Establish New Personal )  
Communications Services )  
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**OPPOSITION AND COMMENTS OF PACIFIC BELL MOBILE SERVICES**

Pacific Bell Mobile Services hereby comments on selected issues raised in the Petitions for Reconsideration of the Memorandum Opinion and Order released on June 13, 1994 in the above-captioned proceeding.

I. **A COST SHARING PLAN FOR MICROWAVE RELOCATION IS NECESSARY.**

The Personal Communications Industry Association ("PCIA") addresses issues associated with the relocation of microwave links. As PCIA explains, microwave links cross MTA and BTA boundaries. Consequently, several licensees can have an interest in relocating the same link<sup>1</sup>. The first licensee to

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<sup>1</sup> PCIA, p. 4.

initiate a relocation will incur a cost while other licensees will receive a benefit. This may encourage some licensees to defer relocation efforts in the hope that other licensees will relocate relevant links. For this reason, PCIA urges the Commission to mandate industry participation in a cost sharing plan after taking comments from the industry.<sup>2</sup>

We agree. A cost sharing plan is necessary to ensure that the benefits and burdens of microwave relocation are distributed equally. We also agree that the Commission should act promptly on this issue, at the same time ensuring that the development of a cost sharing plan does not delay the PCS auctions.

## II THE MTA AND BTA LICENSING SCHEME IS APPROPRIATE.

Point Communications Company ("Point") seeks to equalize the service areas using the Department of Commerce's "BEA" Economic Areas.<sup>3</sup> The Commission has thoroughly considered service area issues and has rejected the need to have a single

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<sup>2</sup> Id. at p. 8.

<sup>3</sup> Point, p. 3.

service area definition.<sup>4</sup> It has specifically rejected the "BEA" Economic Areas.<sup>5</sup> Point provides no new arguments. The Commission should reject this further attempt to redefine service areas.

### III. THE POST-AUCTION DIVESTITURE RULES SHOULD NOT BE CHANGED.

The Cellular Telecommunications Industry Association ("CTIA") and Comcast urge the Commission to broaden its post-auction divestiture rules to permit divestiture by any cellular provider.<sup>6</sup> Contrary to CTIA's statement, the Commission did not "inexplicably"<sup>7</sup> stop short of allowing all cellular companies to bid and divest if the bid was successful. The Commission explained its decision as follows:

If afforded an unlimited opportunity to divest, cellular operations with significant areas of overlap could have incentives to use the bidding process to forestall licensing of new competitors in the market.... A cellular provider with less than 20 percent population coverage would have little incentive to risk incurring

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<sup>4</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, released June 13 1994, para. 77. ("Order on Reconsideration").

<sup>5</sup> Id. at para. 75.

<sup>6</sup> CTIA, pp. 7-8; Comcast, pp. 7-9.

<sup>7</sup> CTIA, p. 7.

penalties for abusing the bidding process when PCS offers greater potential to serve the entire MTA or BTA.<sup>8</sup>

The Commission's reasoning is sound and should not be changed.

IV. THE COMMISSION'S CELLULAR ATTRIBUTION AND GEOGRAPHIC OVERLAP RULES SHOULD BE RETAINED.

CTIA seeks to have the Commission replace the 20 percent cellular attribution rule with 30-35 percent and to replace the 10 percent overlap rule with a 40 percent overlap rule.<sup>9</sup> The Commission has considered and rejected these same arguments previously.

With respect to the 20 percent attribution rule, the Commission stated: "A PCS licensee that has a large equity stake (i.e. more than 20 percent) in a cellular licensee in the same area has less incentive to compete vigorously against its own equity interest even though it may not exercise legal control over the cellular licensee."<sup>10</sup> With respect to the issue of overlap, the Commission stated:

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<sup>8</sup> Order on Reconsideration, para. 144.

<sup>9</sup> CTIA, p. 4.

<sup>10</sup> Order on Reconsideration, para. 113.

"Balancing the potential benefits of the participation in PCS of cellular providers and the potential harms of reduced competition, we are convinced that the 10 percent coverage threshold is appropriate. With this limit we have ensured the opportunity for the emergence of the maximum number of competitors that the market will support for 90 percent of the population. Increasing this limit beyond 10 percent would create greater risk that consumers would be denied the benefit of vigorously competing service providers.<sup>11</sup>

CTIA provides no compelling arguments that support further reconsideration of these rules.

V. THE COMMISSION SHOULD RETAIN ITS CURRENT SPECTRUM CAP WITH RESPECT TO CELLULAR PROVIDERS.

CTIA urges the Commission to reconsider its rule that establishes a total cap on combined PCS and cellular spectrum of 35 MHz until the year 2000, after which cellular providers are entitled to another 5 MHz of spectrum.<sup>12</sup> CTIA desires to be eligible for the additional 5 MHz from the start, or at least within one year after actual inauguration of service by a new

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<sup>11</sup> Id. at para. 136. The Commission recently announced a single entity may have an attributable interest in up to a total of 45 MHz of PCS, Cellular and SMR Spectrum. Press Release Report No. DC-2638, Regulatory Framework for CMRS Completed, Aug. 9, 1994.

<sup>12</sup> CTIA, pp. 6-7.

PCS entrant in the relevant PCS service area.<sup>13</sup> CTIA states that "even if the Commission determines that cellular's competitors are to be given a 'head start' in PCS, the Commission's five year prohibition paints with too broad a brush."<sup>14</sup> CTIA conveniently omits the fact that cellular providers have a ten to twelve year head start over PCS providers. The Commission's rule takes the cellular headstart into account<sup>15</sup> and should be retained.

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<sup>13</sup> Id. at p. 7.

<sup>14</sup> Id.

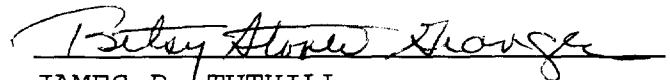
<sup>15</sup> Order on Reconsideration, para. 67.

VI. CONCLUSION

For the foregoing reasons, Pacific Bell Mobile Services respectfully requests the Commission to reject the Petitions for Reconsideration addressed herein. However, as noted above, we support the development of a cost sharing plan for microwave relocation.

Respectfully submitted,

PACIFIC BELL MOBILE SERVICES



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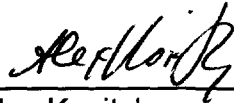
Its Attorneys

Date: August 30, 1994



## CERTIFICATE OF SERVICE

I, Alex Kositsky, do hereby certify that a copy of the foregoing Opposition and Comments of Pacific Bell Mobile Services was mailed this 30th day of August, 1994, via first class United States mail, postage prepaid to the parties on the attached service list.

A handwritten signature in cursive script, appearing to read 'Alex Kositsky', is written over a horizontal line.

Alex Kositsky

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August 30, 1994  
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GEN Docket No. 90-314**

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